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11 *CallFire, Inc.*

12 UNITED STATES DISTRICT COURT  
13 SOUTHERN DISTRICT OF CALIFORNIA

14 DAVID KAUFFMAN, on behalf of  
15 himself, and all others similarly  
16 situated,

17 Plaintiff,

18 v.

19 CALLFIRE, INC.,

20 Defendant.

Case No. 14- CV-1333-H-DHB  
*Assigned to the Honorable Marilyn L.  
Huff*

**DECLARATION OF  
JAGANNATHAN THINAKARAN IN  
SUPPORT OF DEFENDANT  
CALLFIRE, INC.'S MOTION TO  
DISMISS COMPLAINT FOR  
DAMAGES**

[Filed concurrently with Notice of Motion  
and Motion to Dismiss and Memorandum  
of Points and Authorities; [Proposed]  
Order submitted]

**DECLARATION OF JAGANNATHAN THINAKARAN  
IN SUPPORT OF MOTION TO DISMISS**

I, Jagannathan Thinakaran, declare pursuant to 28 U.S.C. § 1746:

1. I am the Chief Operating Officer of Defendant CallFire, Inc. (“CallFire”). I submit this Declaration in support of CallFire’s Motion to Dismiss Plaintiff’s Complaint for Damages and Injunctive Relief (“Complaint”).

2. CallFire operates and controls the website [www.callfire.com](http://www.callfire.com) and was at all times relevant to the Complaint certificated as a common carrier registered with the Federal Communications Commission. *See* <http://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=829923>

3. Relevant to this case, CallFire offers various web-based common carrier services that allow CallFire’s customers to create their own voice or text messages and transmit those messages to recipients selected by the user through CallFire’s web-based common carrier services.

4. CallFire does not provide its customers with lists of telephone numbers or the content of the messages they choose to send. Rather, all CallFire customers that utilize CallFire’s common carrier services to initiate their own messages provide their own content, select their own list of telephone numbers to be contacted, and select when their messages will be initiated.

5. After the user has created his or her message and selected the telephone number(s) to be called, and after the messages are initiated by the user, CallFire’s system receives instructions to transmit the message and routes the user’s message to the appropriate telecommunications carriers for ultimate delivery to the recipients selected by the user.

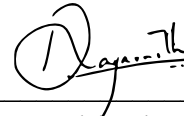
6. Over 100,000 non-profits, political and religious organizations, and businesses utilize CallFire’s common carrier services to reach their constituents and customers. As just two examples, universities utilize CallFire’s software platform to send notifications to their students and staff in the event of an emergency, *see*,

1 e.g., <http://www.callfire.com/case-studies/swu>, and non-profits assisting low-  
 2 income Americans obtain affordable medications can increase their outreach  
 3 programs through CallFire's common carrier services. *See, e.g.,*  
 4 [http://www.callfire.com/case-studies/scbn-voice-broadcast-solution-assists-](http://www.callfire.com/case-studies/scbn-voice-broadcast-solution-assists-healthcare-clients)  
 5 [healthcare-clients.](http://www.callfire.com/case-studies/scbn-voice-broadcast-solution-assists-healthcare-clients)

6 7. Every customer that utilizes CallFire's common carrier services to  
 7 send their own messages is required to agree to CallFire's Terms of Service before  
 8 initiating any messages. A true and correct copy of CallFire's Terms of Service is  
 9 attached as **Exhibit A**.

10 I declare under penalty of perjury under the laws of the United States of  
 11 America that the foregoing is true and correct.

12 Executed in Santa Monica, California on: 8/15/2014


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15 Jagannathan Thinakaran  
 16 Chief Operating Officer, CallFire, Inc.  
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# Exhibit A

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Call Us! (877) 897-FIRE (tel:+18778973473) MENU 

# Terms of Service

## 1. Overview

Welcome to the family of sites provided by CallFire Inc. ("CallFire"). This agreement applies to all of the websites on which it is posted including CallFire.com, MoboMix.com, EZTexting.com, GroupTexting.com, and ClubTexting.com (collectively "CallFire Sites"). Use and access to the CallFire Sites (including any rebranded or white label version of the CallFire Sites), and the text message, hosted telemarketing, and voice broadcast services described below (the "Services"), are subject to these terms and conditions of use (the "Terms") as well as our Privacy Policy located at <http://www.callfire.com/legal/privacy> (<http://www.callfire.com/legal/privacy>).

We reserve the right to change these Terms from time to time. Any updates to these Terms shall be posted on this website. You acknowledge your responsibility to review these Terms from time to time and to be aware of any such changes. By continuing to use any of the CallFire Sites or Services after we post any such changes, you accept these Terms, as modified.

By accessing one of the CallFire Sites or our Services, you accept these Terms and certify that you have reviewed these Terms are within or have reached the age of majority or age 18 (whichever is greater) in your jurisdiction. IF YOU DO NOT AGREE WITH ANY OF THESE TERMS, PLEASE LEAVE THIS WEBSITE BY CLOSING YOUR INTERNET BROWSER WINDOW NOW. IF YOU DO NOT INTEND ON USING THE SERVICES IN ACCORDANCE WITH THESE TERMS, DO NOT UTILIZE THE SERVICES PROVIDED BY CALLFIRE.

## 2. The Services

Services described on the CallFire Sites may or may not be available in all countries or regions of the world, may be available under different trademarks in different countries and, where applicable, may be approved or cleared by a government regulatory body for sale or use with different indications and restrictions in different countries. You agree to use the CallFire Services in accordance with all applicable guidelines as well as all state and federal laws that the Services are subject to.

The Services consist of one or more of the following: a web-based interface, access to incoming telephone number or keywords, Direct Inward Dialing Numbers (“DIDs”), messaging applications, voice broadcast applications, SMS gateway access, data encryption, data transmission, data access, data storage and, if applicable, synchronization software, as well as software maintenance and upgrades and customer support, that enable you to send text messages and/or voice broadcasts to recipients designated by you (collectively, the “Services”). We provide MT outbound messages through different routes, and the level of reliability and support for special features varies according to the route. You are responsible for obtaining and maintaining all computer hardware, software and communications equipment needed to access the Services, and for paying all access charges (e.g. ISP, telecommunications) incurred while using the Services.

CallFire only provides that the Services are processed correctly and delivered by CallFire to the applicable network. CallFire is not responsible for the final delivery of any communication initiated through CallFire’s Services, as this is out of our control and is the responsibility of the communications carrier.

CallFire transmits and receives text messages and voice broadcasts via major telecommunications companies and mobile network operators, and thus CallFire’s influence over the timing of the transmission of your messages and broadcasts is within the technical constraints imposed upon CallFire. While CallFire shall use commercially reasonable efforts to transmit your messages and broadcasts to the applicable network for final delivery to your designated recipients as fast as possible, we cannot commit to, and do not guarantee, a specific maximum delivery time. Such times depend on various network and system-related factors among the various entities involved in the transportation of your messages and broadcasts across the public switched telephone network and/or Internet. You should know that communications carriers assign text messages and voice broadcasts with a default lifetime and any message or broadcast that cannot be delivered successfully within the lifetime assigned to it will be discarded by the communications carrier without any notice. CallFire is not liable for any loss incurred by the failure of a message or broadcast to be delivered, and you acknowledge that damages for financial or other loss resulting from delivery failure cannot be claimed from CallFire for any such non-deliveries. Furthermore, you agree that message and broadcast contents are deemed to have zero value.

### 3. Usage Policy

You represent and warrant that the owners of the phone numbers you provide to CallFire, to which outbound messages and broadcasts are transmitted through the Services, have consented or otherwise opted-in to the receipt of such messages and broadcasts. You agree that you will include clear opt-out/unsubscribe information on at least every fifth text message you send through CallFire’s Services and otherwise adhere to the Consumer Best Practices Guidelines promulgated

by the Mobile Marketing Association. You further agree that any individual requesting "Do-Not-Call" ("DNC") status shall immediately be placed on your DNC accounts list and removed from your list of approved contacts used with the CallFire Services and the CallFire Sites.

You agree to familiarize yourself with and abide by all applicable local, state, national and international laws and regulations and are solely responsible for all acts or omissions that occur under your account, including without limitation the content of the messages and broadcasts transmitted through the CallFire Services. Without limiting the foregoing, you agree to familiarize yourself with the legalities of any messages, calls, broadcasts, and campaigns transmitted through the CallFire Services by visiting the following websites:

- Federal Trade Commission, <http://www.ftc.gov> (<http://www.ftc.gov>)
- Federal Communications Commission, <http://www.fcc.gov> (<http://www.fcc.gov>)
- DoNotCall Registry Info, <http://www.donotcall.gov> (<http://www.donotcall.gov>)

The Telephone Consumer Protection Act ("TCPA"), the Federal Trade Commission, the Federal Communications Commission, the DNC list registry rules (<http://www.donotcall.gov> (<http://www.donotcall.gov>)) and various state laws, rules and regulations place restrictions on certain types of phone calls and text messages. CallFire is in no way attempting to interpret any laws, rules, or regulations. This information is provided merely as a courtesy and is not intended to replace your responsibility to familiarize yourself with and abide by the legal requirements pertaining to your messages, broadcasts and campaigns prior to using the CallFire Sites or Services. You are ultimately responsible to make your own informed decisions regarding your messages, broadcasts, and campaigns.

You shall schedule campaigns responsibly and in a manner that is courteous to the recipients pursuant to local, state, national, and international calling time rules and regulations. You are solely responsible for obtaining any rights or licenses to any data, including without limitation sound files, for inclusion in any outbound messages, broadcasts, and campaigns. If you are unfamiliar or unclear on the legalities of any message, broadcast or campaign, you must consult with your attorney prior to your use of the CallFire Sites or Services.

You accept that the Services are provided for professional use only, and you agree that your use of the CallFire Sites or Services shall not include:

- Sending unsolicited marketing messages or broadcasts (i.e. spam);
- Sending any calls to life-line services, such as hospitals, fire, police, 911 or utility- related telephone numbers;
- Using strings of numbers as it is unlawful to engage two or more lines of a multi-line business;
- Harvesting, or otherwise collecting information about others, without their consent;
- Misleading others as to the identity of the sender of your messages or broadcasts, by creating a false identity, impersonating the identity of someone/something else or by providing contact details that do not belong to you;



- Transmitting, associating or publishing any unlawful, racist, harassing, libelous, abusive, threatening, demeaning, immoral, harmful, vulgar, obscene, pornographic or otherwise objectionable material of any kind;
- Transmitting any material that may infringe upon the intellectual property rights of third parties including trademarks, copyrights or other rights of publicity;
- Transmitting any material that contains viruses, trojan horses, worms, time bombs, cancel-bots or any other harmful/deleterious programs;
- Interfering with, or disrupting, networks connected to the Services or violating the regulations, policies or procedures of such networks;
- Attempting to gain unauthorized access to the Services, other accounts, computer systems or networks connected to the Services, through password mining or any other means;
- Interfering with another's use and enjoyment of the Services or CallFire Sites; or
- Engaging in any other activity that CallFire believes could subject it to criminal liability or civil penalty/judgment.

You agree to provide legal contact information in any outbound campaign within the initial greeting message. You further agree that CallFire is, under no circumstances, responsible for the contents and/or accuracy of your messages or broadcasts and CallFire will only transmit them on a basis of good faith that you use the Services in accordance with these Terms. You will provide your own sound files for all outbound campaigns. CallFire will not be liable for any misuse of the Services by you. CallFire is not responsible for the views and opinions contained in any of your messages or broadcasts.

Customer will not purposely route calls to high cost non-RBOC (Regional Bell Operating Company) areas for origination or termination of telecommunications traffic on the CallFire system. Calls may be monitored and reported upon each billing cycle to ensure sound traffic patterns. Excessive routing of high-cost calls will be addressed to customer by CallFire and fines may be assessed to recover excess charges from CallFire VoIP termination companies.

## 4. Content Submission / Discussion Areas

You agree that any information or materials that you or individuals acting on your behalf provide to CallFire (other than information required for your use of the Services as contemplated herein) will not be considered confidential or proprietary. By providing any such information or materials to CallFire (other than information required for your use of the Services as contemplated herein), you grant to CallFire an unrestricted, irrevocable, worldwide, royalty-free, perpetual license to use, reproduce, display, publicly perform, transmit, make derivative works of, and distribute such information and materials, and you further agree that CallFire is free to use any ideas, concepts or know-how that you or individuals acting on your behalf provide to CallFire. In connection with such information and materials, you warrant and represent to CallFire that you have all rights, title and interests necessary to provide such content to CallFire, and that your provision of the content to CallFire shall not infringe any third party's proprietary or personal rights, including but not limited to any trademark, copyright, patent, or trade secret.

CallFire may at its option provide you with one or more areas within the CallFire Sites for online discussions (e.g. message boards, wikis, chat rooms, or blogs). Should you choose to participate in such a forum, you agree not to utilize the forum for illegal or inappropriate purposes. CallFire reserves the right but will not be obligated to edit or delete postings to its forums at any time and for any reason. CallFire shall also have no responsibility or liability for any content created or posted by you or other third parties within any online forum.

## 5. Username / Password

As part of the registration process you will need a username and/or password. You shall provide CallFire with accurate, complete, and regularly updated member profile information. You agree to notify CallFire of any known or suspected unauthorized use(s) of your user account, or any known or suspected breach of security, including loss, theft, or unauthorized disclosure of your username or password. You shall be responsible for maintaining the confidentiality of your password. Any fraudulent, abusive, or otherwise illegal activity may be grounds for termination of your user account, in CallFire's sole discretion, and you may be reported to appropriate law-enforcement agencies.

## 6. Newsletter Opt-In

With the exception of Services obtained through ClubTexting.com, any email addresses submitted for a new account for use of the Services are automatically added to the CallFire newsletter. Any email addresses submitted to CallFire's agent-login screen are automatically added to the CallFire newsletter. To permanently unsubscribe to any CallFire newsletter please email support@CallFire.com (mailto:support@CallFire.com). To opt into the separate newsletter offered through ClubTexting.com, you must register at a href="<http://www.clubtexting.com/join-newsletter.html>" (<http://www.clubtexting.com/join-newsletter.html>) rel="nofollow" ><http://www.clubtexting.com/join-newsletter.html> (<http://www.clubtexting.com/join-newsletter.html>). To permanently unsubscribe to the ClubTexting.com newsletter please email info@clubtexting.com (mailto:info@clubtexting.com).

## 7. Intellectual Property

You are permitted to access the CallFire Sites, the Services, and any content provided by CallFire (which may include text, images, hosted software, sound files, video or other content, and may be provided via the CallFire Sites or otherwise) solely for the purpose of receiving information about CallFire's business and products, purchasing and utilizing the Services, communicating with CallFire, entering prize promotions offered by CallFire, or otherwise as stated on the CallFire Sites. CallFire hereby grants a worldwide, fully paid-up, perpetual, non-exclusive, non-transferable license to you to use the CallFire Sites and Services solely for the purpose of operating the CallFire Sites and using the Services.

We may have copyrights, trademarks, patents, trade secrets, or other intellectual property rights covering subject matter in the Services, including the web pages that are part of the Services and the CallFire Sites. Except as expressly provided in these Terms, the availability of the Services and the CallFire Sites does not give you any license to these patents, trademarks, copyrights, or other intellectual property. All copyrights, trademarks, patents, trade secrets and other intellectual proprietary rights contained in the CallFire Sites are the sole property of CallFire or its licensors, each of whom reserves all rights with regard to such materials. You acknowledge and agree that you may not copy, reproduce, retransmit, modify, alter, create any derivative works, reverse engineer, decompile, or disassemble any portion of the Services or CallFire Sites, including any proprietary communications protocol used by the Services or the CallFire Sites without the express written permission of CallFire. All other trademarks or trade names are the property of their respective owners.

## 8. Data Protection & Privacy

In order to ensure your compliance with these Terms and to ensure that CallFire complies with national and international laws, we may, from time to time, randomly check the messages and broadcasts that you send. Nonetheless, we are committed to maintaining the privacy of your information, pursuant to our Privacy Policy, located at <http://www.callfire.com/legal/privacy> (<http://www.callfire.com/legal/privacy>). Except as otherwise required for your use of the Services as contemplated herein, CallFire does not want you to, and you should not, send any confidential or proprietary information to CallFire via the CallFire Sites or the email addresses referenced on the CallFire Sites.

You further recognize that CallFire does not want you to, and you warrant that you shall not, provide any information or materials to CallFire that is defamatory, threatening, obscene, harassing, or otherwise unlawful, or that incorporates the proprietary material of another.

## 9. Payments

Your use of the Services is contingent on your paying for such use (whether paid in advance or through the purchase of credits on the CallFire Sites), in the amounts and using the methods indicated on the CallFire Sites. Your payment for the Services, Credits (as defined below in Section 10), keywords, DIDs, usage-sensitive fees and/or plans (a portion of which also includes software maintenance and upgrades, as well as customer support) shall be deemed completed when CallFire receives the full amount of payment owed for such Services, Credits, keywords, DIDs and/or plans. You are responsible to pay for any message or broadcast you attempt to send to any number, regardless of whether the message is actually received by the intended recipient. As CallFire is dependent on other entities for the delivery of your messages and broadcasts, our price per credit may require adjustment in order to account for costs that are not in our control. Accordingly, we may adjust our prices from time to time without prior notice.

CallFire will charge your indicated method of payment for the Services, Credits, keywords, DIDs and/or plans immediately upon your confirming the payment method and amount. Amounts to be charged may include sales and other taxes where applicable and any other amounts indicated on the Site. To the extent that you are responsible for any additional taxes or fees beyond those collected by CallFire, you agree that you will pay them when due. Your account will be credited within 24 hours of CallFire verifying receipt of your payment. If you have elected to make a payment by credit card and we do not receive payment from the credit card issuer, you agree to pay all amounts due immediately upon demand by CallFire.

CallFire shall not be responsible for any errors or transmission failures with regard to the charging and collection of funds from your indicated payment method, nor for any actions taken by the provider of the payment method you choose (which could include refusal to authorize the charge). In addition to these Terms, any payments made by you may be subject to the agreement between you and the provider of the payment method.

As between you and CallFire, you are responsible for all charges related to purchases made using your account and payment method, whether or not you authorized such purchases. Standard charges apply to any test call sent originating from your account or initiated using your API key.

In the event of accidental under billing in favor of a customer, a non-payment by customer under these Terms, CallFire shall be entitled to immediately proceed with collection remedies and shall be entitled to recover any and all costs, fees, and expenses of such collection efforts, including but not limited to: collection agencies, court costs, filing and service of process fees, attorneys' fees incurred from counsel of CallFire's choosing, or any other costs, fees, and expenses incurred in the pursuit of collection on all customer accounts and receivables due and payable under these Terms.

## 10. Credits

Credits are paperless vouchers that you purchase and which facilitate the transmission of the CallFire Services selected by you. The chosen route as well as the destination of a message or broadcast causes the amount of credits required to either increase or decrease but, in either case, will always be made known beforehand through the Pricing Page of our CallFire Sites. The submission of a seemingly-valid message or broadcast will cause an associated quantity of credits to be debited from your account and you can obtain the real-time status of your account at any time through the online interface.

### Expiration of Credits and Prepaid Minutes

Credits purchased as a part of a package or monthly plan, and not used within the month of purchase, expire at the end of the month, unless the plan explicitly provides for roll-over of credits. Individual anytime, non-monthly plan credits purchased through your account expire after 18

months from the date of purchase, at which point such credits shall expire automatically, unless otherwise stated at the time of purchase. **Credits are purchased on a first-bought, first-to-expire basis.** Additionally, the value of credits may change over time as the cost of transmission changes, and thus you acknowledge that the number of credits needed to utilize the Services may change correspondingly. You may request a full refund of any unused, non-monthly plan credits within one (1) business day of purchase. No other refunds will be given. Any unused value shall be forfeited upon expiration. All prices, per-minute rates, and billing increments are subject to change at any time due to fluctuations in market conditions.

## 11. No Warranty; Limitation of Liability

CallFire reserves the right to modify, suspend, or discontinue the offering of any of the CallFire Sites or Services at any time for any reason without prior notice. Further, while CallFire utilizes electronic and physical security to reduce the risk of improper access to or manipulation of data during transmission and storage, it cannot guarantee the security or integrity of the data and shall have no liability for breaches of security or integrity or third-party interception in transit, nor for any damage which may result to your computer or other property by your use of the CallFire Sites or Services.

You acknowledge that text messages and voice broadcasts are transmitted unencrypted and that eavesdropping of communications by third parties is possible. CallFire recommends that you ensure sensitive and valuable information is communicated by a protected and/or encrypted method.

CallFire shall use commercially reasonable efforts to make access to the Services available through the required access protocols, but makes no warranty or guarantee that (i) the Services will be available at any particular time; or (ii) you will be able to access the Services at any particular time or from any particular location. CallFire will not be liable for any act or omission of any other company or companies furnishing a portion of the Services (including, without limitation communications carriers or ISPs), or from any act or omission of a third party, including those vendors participating in CallFire offerings made to you, or for equipment that it does not furnish, or for damages that result from the operation of customer-provided systems, equipment, facilities or services that are interconnected with the Service. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE CALLFIRE SITES AND SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITHOUT ANY WARRANTIES OR CONDITIONS WHATSOEVER, EXPRESSED OR IMPLIED. NOTWITHSTANDING THE FOREGOING OR ANY STATEMENT TO THE CONTRARY CONTAINED IN THESE TERMS, CALLFIRE DOES NOT WARRANT THAT THE USE OF THE CALLFIRE SITES OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, INCLUDING, BUT NOT LIMITED TO ANY INTERRUPTIONS TO THE SERVICES CAUSED BY THE INTENTIONAL AND/OR MALICIOUS ACTS OF THIRD PARTIES (E.G., "HACKING") NOR SHALL CALLFIRE BE RESPONSIBLE FOR ANY DATA LOSS OR LOSS OF ANY INFORMATION IN YOUR ACCOUNT, REGARDLESS OF THE CAUSE. FURTHERMORE, CALLFIRE MAKES NO

REPRESENTATIONS OR WARRANTIES AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES OR THAT THE CALLFIRE SITES OR SERVICES WILL MEET ANY OF YOUR SPECIFIC REQUIREMENTS OTHER THAN AS MAY BE EXPRESSLY SET FORTH IN THESE TERMS. CALLFIRE MAKES NO REPRESENTATIONS OR WARRANTIES AND HEREBY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS, STATUTORY OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, RELIABILITY, COMPLETENESS, OR TIMELINESS OF THE MATERIAL, SERVICE, SOFTWARE, TEXT, GRAPHICS OR LINKS, AND ALL WARRANTIES IMPLIED FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. CALLFIRE SHALL NOT BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES ARISING FROM LOSS OF USE OR LOST BUSINESS, LOSS OF OPPORTUNITY, LOSS OF REVENUE, LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF DAMAGE TO OR CORRUPTION OF DATA OR LOSS OF GOODWILL), OR FOR ANY COST OF PROCUREMENT OF SUBSTITUTE SERVICES ARISING IN CONNECTION WITH THESE TERMS, WHETHER IN AN ACTION IN CONTRACT, TORT, STRICT LIABILITY OR NEGLIGENCE, OR OTHER ACTIONS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF YOUR USE OF THE CALLFIRE SITES OR SERVICES RESULTS IN THE NEED FOR SERVICING OR REPLACING EQUIPMENT, SOFTWARE, OR DATA, CALLFIRE IS NOT RESPONSIBLE FOR THOSE COSTS. CALLFIRE'S TOTAL LIABILITY ARISING OUT OF YOUR USE OF THE CALLFIRE SITES OR SERVICES FOR DIRECT DAMAGES SHALL NOT, IN THE AGGREGATE, EXCEED AN AMOUNT EQUAL TO THE MONTHLY TRANSACTION FEE PAID BY YOU TO CALLFIRE HEREUNDER.

## 12. User Warranties; Indemnification

You warrant and represent to CallFire that you have all necessary rights, power, and authority to agree to these Terms and perform your obligations hereunder, and nothing contained in these Terms or in the performance of such obligations will place you in breach of any other contract or obligation. You further warrant and represent that you are and shall at all times remain in full compliance with all applicable laws, rules and regulations with regard to your use of the CallFire Sites and Services, including without limitation the Telephone Consumer Protection Act, the Telemarketing Sales Rule, the CAN-SPAM Act (Controlling the Assault of Non-Solicited Pornography and Marketing Act) of 2003, and all other laws and regulations concerning privacy, telemarketing, and Internet marketing.

You agree to indemnify and hold harmless CallFire and its affiliates and each of their respective officers, directors, shareholders, employees, agents, contractors, representatives, content providers and service providers, from and against any and all losses, claims, obligations, liabilities, damages, settlements, costs and expenses (including, but not limited to, consequential damages, incidental damages, special damages, disbursements and attorneys' fees, including attorneys' fees



incurred from counsel selected by CallFire in its sole discretion) arising from or relating to any actual or threatened claim, suit, action, proceeding, governmental investigation or enforcement action based upon or arising out of: (i) your breach of the above warranties; or (ii) any use by you, or an account or computer owned by you, of the CallFire Sites or Services. You agree to cooperate as fully as reasonably required in the defense of any claim, suit, action, proceeding, governmental investigation or enforcement action, but we reserve the right, at your expense, to assume the exclusive defense and control of any matter in which you are a named party and that is otherwise subject to indemnification by you. You acknowledge and agree to be held liable for any and all damages caused to CallFire by you as a direct result of a violation of local, state, national or international laws and regulations, including but are not limited to those damages that may arise from your fraudulent, intentional or unintentional harm, disability, unauthorized use of, or destruction to any and all equipment, licensing and/or services provided by CallFire to you.

## **13. Termination, Cancellation and/or Suspension by CallFire**

If at any time you breach these Terms, we may elect to suspend, terminate, and/or cancel your use of the Services and/or recover any damages from you arising from the event(s) giving rise to the suspension, termination, or cancellation. We reserve the right to suspend the Services at any stage for any reason we may deem necessary to continue to provide our Services in a way that may be hindered by your status as being our client, your financial status or the content of the messages or broadcasts originating from you.

Upon any such termination, cancellation, and/or suspension, you are still responsible for any obligations then accrued. Your obligation to pay all amounts accrued and owed by you shall continue even after any suspension or cancellation of your access to the Services (in whole or in part). Upon termination, for any reason, you agree to immediately cease using the Services and CallFire shall have no obligation to you after any termination or cancellation of these Terms.

Should such a termination take place when you still have credits in your account, you shall receive back, at our discretion, a fair monetary value of such credits, save any expenses that may be incurred by CallFire, including, without limitation, for payment of transfer duties, legal costs, third-party costs, or penalties.

The provisions regarding ownership, payments, warranties, and indemnifications will survive any suspension, termination, or cancellation of your use of the Services or CallFire Sites.

## **14. Termination by the User**

You are free to terminate or cancel your use of the Services at any time, and for any reason. If you are on a monthly plan or pay for monthly Keywords or DIDs, login to your account, downgrade to Pay & Go and cancel any Keyword or DID subscriptions you may have. Notwithstanding the foregoing, unless due to a breach solely by CallFire that it fails to cure within thirty (30) days of its receipt of your notice, in no event shall CallFire be obligated to refund to you the reasonable value of any unused credits previously purchased by you.

## 15. Links to other Websites

The CallFire Sites may contain links to third party websites. These links are provided solely as a convenience to you and not as an endorsement by CallFire of the contents on such third-party websites. CallFire is not responsible for the content of linked third-party websites and does not make any representations regarding the content or accuracy of materials on such third-party websites. If you decide to access linked third-party websites, you do so at your own risk.

CallFire cannot ensure that you will be satisfied with any products or services that you purchase from a third party website that links to or from the CallFire Sites, since these websites are owned and operated by independent third parties. CallFire does not endorse any of the products/services, nor has CallFire taken any steps to confirm the accuracy or reliability of any of the information contained in such third party websites. CallFire does not make any representations or warranties as to the security of any information (including, without limitation, credit card and other personal information) you might be requested to give any third party, and you hereby irrevocably waive any claim against us with respect to such websites. CallFire strongly encourages you to make whatever investigation you feel necessary or appropriate before proceeding with any online or off-line transaction with any of these third parties.

CallFire consents to links to the CallFire Sites which conform to the following: the appearance, position, and other aspects of any link to the CallFire Sites may neither create the false appearance that an entity or its activities or products are associated with or sponsored by CallFire nor be such as to damage or dilute the goodwill associated with the name and trademarks of CallFire or its affiliates. CallFire reserves the right to revoke this consent to link at any time in its sole discretion, without notice.

## 16. Security Rules

You are prohibited from violating or attempting to violate the security of the CallFire Sites and Services and from using the CallFire Sites and Services to violate the security of other websites by any method, including, without limitation: (a) accessing data not intended for you or logging into a server or account which you are not authorized to access; (b) attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization; (c) attempting to interfere with service to any user of the CallFire Sites or



Services, host or network, including, without limitation, via means of submitting a virus to the CallFire Sites, overloading, "flooding," "spamming," "mailbombing," or "crashing"; (d) sending unsolicited e-mail, including promotions and/or advertising of products or services; or (e) forging any CallFire packet header or any part of the header information in any e-mail, instant message, text message or newsgroup posting. Violations of system or network security may result in civil or criminal liability. CallFire may investigate violations of these Terms, and may involve and cooperate with law enforcement authorities in prosecuting users of the CallFire Sites who are involved in such violations.

## 17. Force Majeure

CallFire shall not be liable for any failure or delay in performing its obligations hereunder, which such failure or delay is caused by fire, flood, earthquake, elements of nature or acts of God, acts of war, insurrection, terrorism, strike, failure or downtime of any telecommunications line and/or unavailability of any telecommunications or Internet facilities, power failure, governmental restrictions, any court order, compliance with any law, regulation, or order of any governmental authority, or any other cause beyond the reasonable control of CallFire. In addition, CallFire shall be so excused in the event it is unable to acquire from its usual sources, and on terms it deems to be reasonable, any material necessary for the performance of the Services.

## 18. Choice of Law and Jurisdiction

These Terms shall be governed by and construed in accordance with the laws of the State of California notwithstanding its laws governing conflicts of laws. Except as hereinafter provided, any dispute arising under these Terms shall be settled and determined by binding arbitration in Santa Monica, California in accordance with the provisions of the Federal Arbitration Act, 9. U.S.C. §§1-16, as amended (the "Federal Arbitration Act"), to the exclusion of state laws inconsistent therewith. The terms of the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") then in effect shall apply except to the extent they conflict with the express provisions of this paragraph. A single independent arbitrator shall conduct the arbitration. The parties shall endeavor to select the independent arbitrator by mutual agreement. If such agreement cannot be reached within thirty (30) days after a dispute has arisen which is to be decided by arbitration, the selection of the arbitrator shall be made in accordance with the Rules as then in effect. The arbitrator shall be a member of a state bar engaged in the practice of law in the United States or a retired member of a state or the federal judiciary in the United States. The award of the arbitrator shall be based on the evidence admitted and the substantive law of the State of California (subject to any applicable preemption or supersedence by U.S. federal substantive law) and shall contain an award for each issue and counterclaim. The award shall be made within thirty (30) days following the close of the final hearing and the filing of any post-hearing briefs authorized by the arbitrator, and such award shall set forth in writing the factual findings and legal reasoning for such award. The arbitrator may, in his/her discretion, award to any party specific performance or injunctive relief

(the foregoing is not intended to limit CallFire's access to the courts to the extent provided below). The arbitrator may not change, modify, or alter any express condition, term, or provision of these Terms or the extent the scope of their authority is expressly limited. Except as provided in the Federal Arbitration Act, the arbitration award will be final and binding upon the parties and no appeal of any kind may be taken. Judgment may be entered thereon in any court having jurisdiction thereof. Each party shall be entitled to inspect and obtain a copy of non-privileged relevant documents in the possession or control of the other party. All such discovery shall be in accordance with procedures approved by the arbitrator. Unless otherwise provided in the award, each party shall bear its own costs of discovery. The statute of limitations applicable under California law to the commencement of a lawsuit shall apply to the commencement of arbitration hereunder.

Anything in the foregoing paragraph to the contrary notwithstanding, CallFire may seek injunctive relief in any court having jurisdiction over the parties to enjoin or prevent any action you take or threaten to take in violation of these Terms.

These Terms are only those stated herein, which shall constitute the complete agreement between the parties. No terms and conditions stated in or attached to your communications to CallFire are applicable to these Terms in any way and are not to be considered your exceptions to the provisions of these Terms.

## 19. Miscellaneous

The failure of either party to exercise in any respect any right provided for herein will not be deemed a waiver of any further rights hereunder. If any provision of these Terms is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that these Terms will otherwise remain in full force and effect and enforceable. No agency, partnership, joint venture, or employment is created as a result of these Terms and you do not have any authority of any kind to bind CallFire in any respect whatsoever. In any action or proceeding to enforce rights under these Terms, CallFire will be entitled to recover costs and attorneys' fees if it substantially prevails.

All notices required hereunder shall be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. CallFire may give notice to you by means of a general notice on the CallFire Sites or Services, electronic mail to your e-mail address on record in CallFire's account information, or by written communication sent by personal delivery, fax, overnight courier, or certified or registered mail to your address on record in CallFire's account information.

Last updated March 27, 2013.

## COMPANY

[About Us \(/about\)](#)

[Team \(/about/team\)](#)

[Careers \(/about/careers\)](#)

[Blog \(/blog\)](#)

[Press \(/press\)](#)

## PRODUCTS

[Text Messaging \(/products/text-messaging\)](#)

[Call Tracking \(/products/call-tracking\)](#)

[Voice Broadcast \(/products/voice-broadcast\)](#)

[Cloud Call Center \(/products/cloud-call-center\)](#)

[CallFire IVR \(/products/ivr\)](#)

## RESOURCES

[Case Studies \(/case-studies\)](#)

[Industries \(/industries\)](#)

[Communications Glossary \(/help/glossary/communications\)](#)

[Marketing Glossary \(/help/glossary/business-marketing\)](#)

[Area Codes \(/local-phone-numbers/area-codes\)](#)

## HELP

[FAQs \(https://answers.callfire.com/hc/en-us/sections/200193833-FAQs\)](https://answers.callfire.com/hc/en-us/sections/200193833-FAQs)

[Webinars \(https://answers.callfire.com/hc/en-us/articles/202174798-Webinars\)](https://answers.callfire.com/hc/en-us/articles/202174798-Webinars)

[CallFire XML \(https://answers.callfire.com/hc/en-us/sections/200187096-CallFire-XML\)](https://answers.callfire.com/hc/en-us/sections/200187096-CallFire-XML)

[Contact Us \(/contact\)](#)

[Reviews \(/reviews\)](#)

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[Privacy Policy \(/legal/privacy\)](#) / [Terms \(/legal/terms\)](#) / [FTC/FCC/DNC Compliance \(/legal/compliance\)](#) / [Sitemap \(/sitemap\)](#)

 (<http://twitter.com/CallFire>)   
(<https://www.facebook.com/callfire>)   
([https://plus.google.com/100142045997033051154?](https://plus.google.com/100142045997033051154?prsrc=3)  
[prsrc=3](https://plus.google.com/100142045997033051154?prsrc=3))   
(<http://www.youtube.com/user/CallFireTelephony>)  
 (<http://www.linkedin.com/company/callfire>)

Contact Support [support@callfire.com](mailto:support@callfire.com) (<mailto:support@callfire.com>)

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Fax +1.310.943.0415

**KAUFFMAN V. CALLFIRE, INC.**  
**USDC, Southern District Of California Case No. 3:14-cv-01333-H-DHB**

**CERTIFICATE OF SERVICE**

I am a citizen of the United States. My business address is Arent Fox LLP, 555 West Fifth Street, 48th Floor, Los Angeles, California 90013-1065. I am employed in the County of Los Angeles, where this service occurs. I am over the age of 18 years, and not a party to the within cause.

On the date set forth below, according to ordinary business practice, I served the foregoing document(s) described as:

**DECLARATION OF JAGANNATHAN THINAKARAN IN SUPPORT  
OF DEFENDANT CALLFIRE, INC.'S MOTION TO DIMISS  
COMPLAINT FOR DAMAGES**

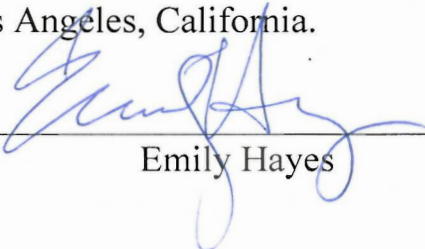
- ☒ (BY CM/ECF) I hereby certify that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants (if any) indicated on the Manual Notice list.
- ☐ (BY FAX) I transmitted via facsimile, from facsimile number 213.629.7401, the document(s) to the person(s) on the attached service list at the fax number(s) set forth therein, on this date before 5:00 p.m. A statement that this transmission was reported as complete and properly issued by the sending fax machine without error is attached to this Proof of Service.
- ☐ (BY E-MAIL) On this date, I personally transmitted the foregoing document(s) via electronic mail to the e-mail address(es) of the person(s) on the attached service list.
- ☐ (BY MAIL) I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business. On this date, I placed the document(s) in envelopes addressed to the person(s) on the attached service list and sealed and placed the envelopes for collection and mailing following ordinary business practices.
- ☐ (BY PERSONAL SERVICE) On this date, I delivered by hand envelope(s) containing the document(s) to the persons(s) on the attached service list.
- ☐ (BY OVERNIGHT DELIVERY) On this date, I placed the documents in envelope(s) addressed to the person(s) on the attached service list, and caused those envelopes to be delivered to an overnight delivery carrier, with delivery fees provided for, for next-business-day delivery to whom it is to be served.

CERTIFICATE OF SERVICE

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☒ (Federal) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 31, 2014 at Los Angeles, California.

  
\_\_\_\_\_  
Emily Hayes

1 *KAUFFMAN V. CALLFIRE, INC.*  
2 USDC, Southern District Of California Case No. 3:14-cv-01333-H-DHB

3 SERVICE LIST

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